98-1853

No. 98_____

Supreme Court, U.S.
FILED
JUN 16 1999
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

MARK WEBB, *Petitioner,*

v.

STATE OF CALIFORNIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the state court violated petitioner's right to due process or equal protection under the United States Constitution when it dismissed petitioner's complaint alleging a state law claim of disability discrimination?

2. Whether the state court violated petitioner's right to due process or equal protection under the United States Constitution when it dismissed petitioner's complaint alleging a state law claim of retaliation?

3. Whether the state court violated petitioner's right to due process or equal protection under the United States Constitution in requiring petitioner to verify his second and third amended complaints?

4. Whether the issues of due process and equal protection asserted in the petition for certiorari were represented by petitioner to the state court below?

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OPINIONS BELOW

The California Supreme Court denied review (Pet. App. A-3). The California Court of Appeals decision was unpublished[1/] (Resp. App. B). The decision of the state trial court was also unpublished (Resp. App. A)

JURISDICTION

The California Supreme Court denied review on February 17, 1999. The petition for writ of certiorari was filed on this Court's docket on May 17, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

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1. Petitioner attached to his petition purported copies of the Court of Appeal decision and the trial court order below, as Petitioner's Appendix A-2 and A-3 respectively. These appended copies contain typographical errors and textual omissions. Respondents have therefore included accurate copies of the appellate and trial court decisions as Respondents' Appendix B and Appendix A, respectively.

STATEMENT

Petitioner filed a civil complaint in California Superior Court, on June 9, 1994, against the State of California Department of Rehabilitation (hereinafter "the State") and various individual employees of the State. Resp. App. B at 4. Petitioner alleged that he had been discriminated against based upon disability in violation of state law, while also alleging that certain of the individual respondents had falsely described him as having a disability. Id., at 5-6.

Petitioner subsequently filed first and second amended complaints, after demurrers to the original and first amended complaints were filed by respondents and sustained by the trial court. The second and third amended complaints were verified in accordance with the order of the trial court. Id., at 5. In the original complaint, the first amended complaint and the verified second amended complaint, petitioner alleged that the individual respondents had stated that petitioner had a mental infirmity and such statements were alleged to be defamatory, libelous and slanderous. Id., at 5-6.

Petitioner's third amended complaint narrowed his claims to two alleged causes of action arising under state law, consisting of a claim for disability discrimination in violation of California Government Code Section 12940 et seq.[2] and retaliation in violation of California Government Code Section 12940 (f), (h) and (i).

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2. Although Petitioner mentioned the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., in the third amended complaint and in his petition for certiorari (Pet. 2-3), he did not seek relief in state court under the federal statute nor did he allege in state court that he had filed a complaint with the Equal Employment Opportunity Commission, as is required in order to bring a civil action under Title I of the ADA for discrimination in employment based on disability.

Petitioner also sought injunctive relief, including this claim as a third cause of action. Id., at 4.

Respondents again demurred to the third amended complaint, arguing that the complaint remained defective based upon state law. Id., at 5. Specifically, respondents argued that petitioner's state law cause of action for discrimination due to an alleged mental disability was rendered fatally defective by petitioner's earlier verified allegations that respondents had defamed petitioner by falsely stating that he had a mental disability. Id., at 8. Respondents also argued that the alleged conduct of the individual respondents was privileged and/or subject to liability under state law. Id at 5.

The trial court sustained respondents' demurrer to the entire complaint without leave to amend, and granted the respondents' motion to dismiss the complaint pursuant to California Code of Civil Procedure Section 581(f)(1). Resp. App. A. Petitioner filed a timely notice of appeal to the California Court of Appeal. Resp. App. B at 5.

The California Court of Appeals held that based upon state law, petitioner's prior allegations of false accusations of mental disability contained in the earlier versions of the complaint could not be ignored simply because petitioner had omitted them from the third amended

complaint. When read into the third amended complaint, the appellate court found that these prior allegations rendered the claims of disability discrimination and retaliation contained in the third amended complaint vulnerable to demurrer. Id., at 8. As to petitioner's assertion that the trial court erred in ordering him to verify the second and third amended complaints, the appellate court stated that petitioner had offered no authority for his position, had not claimed that the alleged error was reversible and had failed to explain how he was harmed by the alleged error. Id., at 6, fn.4.

The California Court of Appeal affirmed the trial court's dismissal of the complaint. Id., at 9. No federal constitutional or statutory issues were raised by petitioner on appeal, or considered by the appellate court. Id.

Petitioner filed a petition seeking review of the appellate court decision by the California Supreme Court. Review was denied by the California Supreme Court on February 17, 1999. Pet. App. A-3.

ARGUMENT

Petitioner contends (Pet. 18, 29) that the state courts violated his rights to "due process and equal protection" by dismissing the third amended complaint and by requiring him to verify the second and third amended complaints. These questions are not properly presented here.

Pursuant to 28 U.S.C. Section 1257, this Court has jurisdiction to review final decisions rendered by the highest court of a State by writ of certiorari:

> ...where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution...of the United States.

Petitioner raises the issues of due process and equal protection for the first time before this Court. Because petitioner failed to raise these issues in a timely manner below, and because the lower courts did not consider these issues, the questions are not properly presented here.

The only issues considered by the California Court of Appeals were issues of California procedural law relating to proper pleading of a cause of action under

state law. Petitioner made no claim below that a state statute conflicted with federal law, nor did he assert any claim based upon federal constitutional rights. Thus, no issue within the Court's jurisdiction as established by 28 U.S.C. Section 1257 was decided by the California Supreme Court or the California Court of Appeal below.

Further, petitioner has failed to comply with Supreme Court Rule 14(g)(i), which requires the petition for writ of certiorari seeking review of a state court judgment to state:

> ...the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record..., so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.

Petitioner is unable to comply with this Court's rule, because no question of federal law was raised in the proceedings below.

In reviewing state court judgments under 28 U.S.C. Section 1257, this Court has consistently refused to consider a petitioner's federal claim unless it was either addressed by or properly presented to the state court that

rendered the decision sought to be reviewed. Adams v. Robertson, 520 U.S. 83, 86 (1997); Yee v. City of Escondido, 503 U.S. 519, 533 (1992); Illinois v. Gates, 462 U.S. 213, 217 (1983); Webb v. Webb, 451 U.S. 493, 501-502 (1981). Where, as here, the state court decision to be reviewed does not mention any federal issue, this Court has assumed that the omission is due to "want of proper presentation in the state courts" unless the petitioner affirmatively shows the contrary. Webb v. Webb, 451 U.S. 493, at 495.

At no point in the state court proceedings below did petitioner make any claim that the trial court's dismissal of his claims infringed his rights to due process or equal protection under the United States Constitution. Having failed to present these issues in the state courts, petitioner is barred from asserting them before this Court.

Even assuming that petitioner had properly presented the issues of due process and equal protection in the state courts below, the constitutional claims presented by petitioner are vague, conclusory and utterly unsupported by authority. Petitioner asserts (Pet. 18) that the state appellate courts violated due process and equal protection when they "affirmed the lower court's requirement that [petitioner] verify his pleading, and then used it as an admission against [him]." He further alleges (Pet. 29) that the requirement that petitioner verify his second and third amended complaints "implies certain judicial bias" and interferes with a "disabled person's constitutional right to seek redress and have access to

courts with the same parity as non-disabled persons, tantamount to a violation of the equal protection clause."

Since petitioner received an opportunity to be heard by the state courts on the issue of the adequacy of his complaint prior to its dismissal, it is unclear that any basis exists for petitioner's assertion that he was denied due process. Nor is there any basis to conclude that the requirement that petitioner verify his complaint was an impermissible classification based upon disability, such that persons with disabilities were treated differently in terms of access to state courts. It is equally possible that the verification requirement was merely an attempt by the trial court to address a specific problem created by this particular litigant and the defective pleadings he had previously filed with the court.

Petitioner's assertion that the dismissal and required verification of his complaint was erroneous is nothing more than a claim that the state courts below misapplied properly stated rules of state law. Such an issue does not warrant review by this Court, as is set forth in Supreme Court Rule 10.

CONCLUSION

Accordingly, we respectfully ask that the judgment be affirmed.

Dated: June 15, 1999.

Respectfully submitted,

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